



April 2020

CALPERS UPDATES DURING COVID-19

As you know, on March 4, 2020, California Governor Gavin Newsom declared a state of emergency due to the COVID-19 pandemic. On March 12, 2020, Governor Newsom issued Executive Order N-25-20 (Executive Order) in response to the pandemic, invoking the Governor's authority under the Emergency Services Act found in Government Code section 8572. To ensure adequate staffing during the state of emergency, the 11-item Executive Order suspends, among other things, certain limitations that have been applicable to CalPERS retirees regarding post-retirement employment. On March 18, 2020, CalPERS issued Circular Letter 200-015-20 explaining the impact of the Executive Order on CalPERS retirees employed as retired annuitants until the state of emergency is lifted.

Suspension of Work Hour Limitation

The retired annuitant work hour limitation of 960 hours per fiscal year has been suspended from the date the state of emergency was declared until the date the state of emergency is lifted. Further, hours worked by a retired annuitant to ensure adequate staffing during the state of emergency will not count toward the retiree's 960-hour limit for the fiscal year. Please note that CalPERS has indicated it will continue to monitor retirees' work hours and will communicate with employers when the hours worked do not fall within this exception, meaning they are not worked to ensure adequate staffing during the state of emergency.

Suspension of Wait Period

Under state law, a retired person is not eligible for employment for a period of 180 days following the date of retirement unless the employer certifies the nature of the employment and that the appointment is "necessary to fill a critically needed position before 180 days have passed."¹ The Executive Order suspended the 180-day break in service requirement to further ensure adequate staffing during the state of emergency.

Additionally, if a CalPERS member has not attained normal retirement age, there must be a "bona fide separation in service" before that CalPERS member may work during retirement for a CalPERS-covered employer. This means that (1) the employer and the member cannot enter into a predetermined agreement prior to retirement for the member to return to work for the employer

¹ Government Code section 7522.56(f)(1).

after retirement; and (2) there must be a separation in service of at least 60 calendar days between the date of the member's retirement and the first day of work for the employer as a retired person. The declaration of a state of emergency exempts retired annuitants from the 60-day separation in service requirement.² However, it does not exempt employers and employees from the prohibition against predetermined agreements.

Aside from the suspensions of limitations for retirees listed above, other limitations remain in effect. Specifically, compensation for an appointment cannot exceed the maximum monthly base salary paid to other employees performing comparable duties, and a retired annuitant cannot receive any benefit, incentive, compensation in lieu of benefits, or other form of compensation in addition to the hourly pay rate.³

Reporting of Families First Coronavirus Act Paid Leave

As previously reported by our office, the Families First Coronavirus Act (FFCRA) became effective on April 1, 2020 and will remain in effect until December 31, 2020. CalPERS issued Circular Letter 200-021-20 on April 16, 2020 regarding reporting of paid leave under the FFCRA.

As it relates to retirees, retired annuitants may be eligible to receive paid sick leave and/or family and medical leave under the FFCRA. CalPERS has advised paid leave will not be considered a prohibited benefit and retirees will not be subject to reinstatement solely for receiving these payments. Sick leave and/or family and medical leave hours under the FFCRA should be reported to CalPERS and will be included in the 960-hour per fiscal year limitation for all retirees. As detailed above, this limitation has been temporarily lifted during the state of emergency.

For updated CalPERS information affecting retirees during the COVID-19 pandemic, please visit <https://www.calpers.ca.gov/page/retirees>.

Should you have any questions regarding Executive Order N-25-20 or any of the changes noted above, please contact Schools Legal Service.

– ERIC K. ALFORD

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² Title 2 of the California Code of Regulations, section 586.2(c).

³ Government Code sections 21221(h), 21224(a), and 7522.56(e).